

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MATICIA SMITH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondents.

**CASE NO. 2:06-cv-0017
CRIM. NO. 2:02-cr-35(2)
JUDGE GRAHAM
Magistrate Judge Abel**

OPINION AND ORDER

On October 25, 2006, the Magistrate Judge issued a *Report and Recommendation* recommending that claim two be dismissed and that petitioner be appointed counsel for an evidentiary hearing to determine whether equitable tolling of the statute of limitations is appropriate, and whether appellate counsel acted unreasonably in failing to pursue a claim under *Blakely v. Washington*, 542 U.S. 296 (2004). *See* Doc. No. 110. Although the parties were specifically informed of their right to object to the *Report and Recommendation*, and of the consequences of their failure to do so, there has nevertheless been no objection to the *Report and Recommendation*.

The *Report and Recommendation* is **ADOPTED AND AFFIRMED**. Claim two is **DISMISSED**. Petitioner is to be appointed counsel for an evidentiary hearing on the issue of whether equitable tolling of the statute of limitations is appropriate, and whether appellate counsel acted unreasonably in failing to pursue a *Blakely* claim. Respondent is to provide supplemental briefing on petitioner's claim that her sentence violated *Blakely*.¹

¹ On December 4, 2006, respondent filed a supplemental response. Doc. No. 112.

IT IS SO ORDERED.

s/James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: December 15, 2006